



Board of Environmental Protection  
Recommendations and Summary of Activities  
Calendar Year 2007

**Maine Department of Environmental Protection**  
17 State House Station  
Augusta, Maine 04333-0017

**February 2008**

Contact: Cynthia S. Bertocci, Executive Analyst 287-2452

**Board of Environmental Protection  
Report to the Joint Standing Committee on Natural Resources**

**Summary of Activities for Calendar Year 2007**

**I. Introduction**

Title 38 section 341-D(7) requires the Board of Environmental Protection to report to the Joint Standing Committee on Natural Resources by January 15 of the first regular session of each Legislature on the “effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board”. While not required this session, it is customary for the Board to provide a summary of its activities for the preceding calendar year.

In general, adjudicatory hearings on matters of significant public interest dominated the Board’s agenda in 2007. The Board held multi-day hearings on the applications by Dragon Products in Thomaston for a solid waste license for closure and reclamation of its cement kiln dust and waste clinker storage piles; the petitions for upstream and downstream passage for American eel and certain species of migratory fish at four hydropower projects on the Kennebec River; the applications by Downeast LNG for a liquefied natural gas import terminal and send-out pipeline; and the appeals of the licenses issued to Verso Paper and Rumford Paper Company for waste discharges to the Androscoggin River and the certification issued to FPL Energy for the Gulf Island Pond-Deer Rips Hydro Project. Each of these hearings was controversial and involved disputed issues of law and fact. While final decisions have not issued for all of these matters, the Board recognizes the hard work of all parties to these proceedings and the efforts they have made to present their views to the Board.

A summary of the Board’s activities for calendar year 2007 follows.

**II. Membership**

Appointments

Governor Baldacci appointed Matthew Scott of Belgrade to a second term on the Board in May of 2007. As you know, Mr. Scott is an aquatic biologist and former Deputy Commissioner of the Department of Inland Fisheries and Wildlife. His technical expertise and knowledge of state government are of great assistance to the Board.

Additionally, in July of 2007, Governor Baldacci appointed Susan Lessard of Hampden to her first term on the Board. Ms. Lessard is currently the Manager for the Town of Hampden and has more than 25 years of service in local government. As such she brings a wealth of experience to the Board on issues of importance to Maine people.

### Vacancies

With the conclusion of the Board's work on the Androscoggin River Appeal proceedings<sup>1</sup> in early February 2008, Board Member Nancy Anderson will complete her service on the Board so that she may devote more time to her new career in counseling. Ms. Anderson has been an outstanding member, and the Board will miss her many contributions to our consideration of environmental matters.

In addition, with completion of the Androscoggin River proceeding, Board Chair Virginia Plummer will be completing her second term, including a year as Chair of the Board. During her year as Chair, Ms. Plummer guided the Board through two complex adjudicatory proceedings, the public hearing on the Androscoggin River Appeals and the applications by Downeast LNG and Downeast Pipeline LLC for a liquefied natural gas (LNG) terminal in Robbinston.

### **III. Recommendations and Issues for Consideration**

As summarized below in Section IV, the Board considers a significant number of matters each year. While each presents important issues for consideration and resolution, the Board would like to comment on the following matter.

#### Petitions to Modify, Suspend or Revoke a License

Over the past two years, the Board has received seven petitions to modify, suspend or revoke a license. With one exception, these petitions have variously requested that the Board reopen the water quality certifications for hydropower projects on the Kennebec River, Androscoggin and Little Androscoggin Rivers, and Messalonskee Stream to require immediate upstream and downstream passage for American eel and certain species of migratory fish. The Board's consideration of these petitions has highlighted the lack of site specific information regarding impacts to migratory fish populations as well as limitations of existing Department rules concerning the processing of such petitions. These issues were the subject of Resolve 2007 Chapter 109 (LD 1528) "Resolve, To Require State Agencies with Jurisdiction over Dams to Review and Update Plans for the Passage of Diadromous Fish." The Board has submitted a report on the petition process to the Joint Standing Committee on Marine Resources and the Joint Standing Committee on Natural Resources under separate cover.

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<sup>1</sup> The Androscoggin River Appeal proceeding addresses the waste discharge licenses for Verso Paper in Jay and Rumford Paper Company and the water quality certification for the Gulf Island Pond-Deer Rips Hydro Project.

In considering the various petitions for eel and fish passage, the Board has been presented with evidence that, as water quality improves, American eels and other migratory fish species are returning to certain Maine waters and that upstream and downstream migration of these fish is affected by the lack of appropriate passage mechanisms at hydropower facilities and other dams. However, the extent of the impact of existing facilities on migratory fish and eel populations or the overall integrity of the aquatic ecosystem is not easily quantified, and the petitions before the Board have not presented a sufficient factual basis to modify a settled license.

In general, the Board believes that use of the Board's petition process to address eel and fish passage on a dam-by-dam basis by reopening a settled license (and water quality certification) is an inappropriate mechanism to advance fish restoration, and it subjects individual dam owners to great uncertainty. Rather, this issue should be addressed on a watershed basis with input from the Departments of Marine Resources and Inland Fisheries and Wildlife, the agencies that have primary responsibility for fisheries management in Maine. Further, the requirement for eel and fish passage at a specific hydropower project is most appropriately addressed at the time of licensing or relicensing by the Federal Energy Regulatory Commission (FERC), in conjunction with issuance of the State water quality certification, when the authority and the mechanism to collect the necessary data and impose appropriate passage requirements is clear.

Since a FERC hydropower license is issued for a period of 30 or more years and environmental conditions will likely change over the term of the license, the Board believes that the State water quality certification for each hydropower project should either include specific eel and fish passage measures at the time of certification or include a specific reopener to provide for eel and fish passage in the future as passage becomes advisable from a fisheries management perspective. Inclusion of a specific reopener provision for eel and fish passage in all State water quality certifications for hydropower projects at the time of issuance would ensure that the ability of the DEP to require such passage in the future is legally preserved.<sup>2</sup>

Finally, in the cases that have come before the Board, the petitioners have argued that upstream and downstream passage for eel and migratory fish is currently required to meet the existing water quality standards for aquatic life and, therefore, the Board must reopen the licenses (certifications) and require such passage. The DEP (including the Board) does not interpret the water quality standards to require such passage at all facilities. Whether the State should universally require eel and fish passage mechanisms at all hydropower projects and other dams as a matter of policy or law is an issue to be decided by the Legislature.

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<sup>2</sup> Some licensees in the various petition proceedings have argued that, absent specific license reopener provisions, there is no legal effect of a Board action to modify a water quality certification to require such passage.

#### **IV. Summary of Matters before the Board in 2007**

The Board's statutory responsibilities are established in 38 M.R.S.A. § 341-D. These responsibilities include the following: rulemaking; decisions on selected permit applications; review (appeals) of Commissioner licensing decisions; review of enforcement actions; issuance of emergency orders; consideration of petitions to revoke, modify or suspend a license; and recommendations to the Legislature for changes to law. This section summarizes the major actions of the Board in 2007.

##### **A. Rulemaking**

During 2007, the Board conducted 17 rulemaking proceedings which are summarized below. Of these, Chapter 150 Control of Emissions from Outdoor Wood Boilers and Chapter 157 CO2 Budget Trading Program Waiver and Suspension were provisionally adopted and have been forwarded to the Committee under separate cover for your consideration.

- Chapter 121 Emission Limitations and Emission Testing of Resource Recovery Facilities and State of Maine 111(d) Municipal Waste Combustor State Plan for Large and Small (Class I and Class II) Facilities (repeal and replace). The rule was updated to bring it into compliance with federal regulations. It establishes new emission standards and incorporates federal requirements for operating practices, operator training, compliance and performance testing, reporting and recordkeeping, and compliance schedules. A public hearing was held on April 5, 2007. The rule was adopted on June 7, 2007. A minor amendment was proposed on August 16, 2007 for public comment. The amendment was adopted on November 1, 2007.
- Chapter 139 Transportation Conformity (new rule): The purpose of this rule is to ensure that federally supported highway and transit projects are consistent with the state's air quality implementation plan (SIP) in accordance with the requirements of the Clean Air Act. The rule sets forth the criteria and procedures for determining whether transportation projects conform to the SIP. A public hearing was held on May 17, 2007. The rule was adopted on August 2, 2007.
- Chapter 141 Conformity of General Federal Actions (amendments): The amendments incorporate recent changes to federal regulations regarding national ambient air quality standards for particulate matter. A public hearing was held on March 1, 2007. The amendments were adopted on April 19, 2007.
- Chapter 150 Control of Emissions from Outdoor Wood Boilers (new rule): The rule implements LD 1824 An Act to Regulate Outdoor Wood Boilers. The rule establishes particulate emission standards, siting criteria, and labeling requirements. A public hearing was held on August 16, 2007. The rule was provisionally adopted on November 1, 2007.



- Chapter 152 Control of Emissions of Volatile Organic Compounds from Consumer Products (amendment): The amendments establish VOC limits for 18 additional categories of consumer products to further reduce emission of ozone precursors. The amendments also streamline date coding and reporting requirements. A public hearing was held on August 2, 2007. The amendments were adopted on November 1, 2007.
- Chapter 156 CO2 Budget Trading Program (new): The rule implements LD 1851 An Act to Establish the Regional Greenhouse Gas Initiative Act of 2007. It establishes, among other things, Maine's emissions budget, consumer benefit account allocation, budget source licensing and reporting requirements, provisions for account certification, and an allowance tracking system. A public hearing was held on September 6, 2007. The rule was adopted on December 6, 2007.
- Chapter 157 CO2 Budget Trading Program Waiver and Suspension (new): The rule provides the Commissioner with the authority, under exceptional circumstances, to waive or suspend the requirements of the CO2 Budget Trading Program. A public hearing was held on September 6, 2007. The rule was provisionally adopted on December 6, 2007.
- Chapter 305 Natural Resources Protection Act Permit by Rule Section 20 (amendment): The amendment applies to activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding and staging areas. It establishes a permit-by-rule procedure for: cutting or removal of vegetation within shorebird roosting and feeding buffer areas; limited expansion of developed areas within shorebird feeding areas; and cutting or removal of vegetation within inland waterfowl and wading bird habitat. A public hearing was held on November 1, 2007. The amendment is proposed for adoption on February 7, 2008.
- Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay and Silt and the Performance Standards for the Storage of Petroleum Products (amendments): The amendments update the standards to ensure consistency with the Stormwater Management Rules; allow the use of double-walled tanks as secondary containment for petroleum products; and update Spill Prevention, Control and Countermeasures requirements to ensure consistency with other Department programs. The proposed amendments were posted to public comment on December 21, 2006. The amendments were adopted on February 15, 2007.
- Chapter 415 Reasonable Costs for Handling and Recycling of Electronic Wastes (amendments): The amendment was in response to a citizen petition. The petition proposed to amend the rule to allow additions to the list of approved electronic waste consolidators outside of the annual listing period if the consolidator meets the criteria for inclusion and there are openings. The amendment was posted for public comment on June 21, 2007. The amendment was adopted on August 16, 2007.

- Chapter 528 Pretreatment Program: This chapter regulates industrial discharges to publicly owned wastewater treatment facilities. The amendments update the rule to incorporate some federally authorized streamlining provisions. The amendments were posted for public comment on October 4, 2007. The amendments were adopted on January 17, 2008.
- Chapter 529 General Permits for Certain Wastewater Discharges (amendments): This chapter describes the regulatory requirements for issuance of general permits authorizing the discharge of certain pollutants to the waters of the State where the risk for significant environmental impact is low. The proposed amendments were minor in nature and were posted for public comment on April 19, 2007. The amendments were adopted on June 7, 2007.
- Chapter 587 In-Stream Flow and Water Level Standards (new): The rule establishes in-stream flow and water level standards for surface water bodies to protect aquatic life and other designated uses of Maine's waters. The rule also establishes a framework for regulating surface water withdrawals as authorized by 38 M.R.S.A. § 470-H. The Board held a public hearing on the proposed rule on August 3, 2006. The rule was provisionally adopted by the Board on November 16, 2006. The rule was finally adopted on July 5, 2007.
- Chapter 595 State Revolving Fund (amendments): This rule describes the regulatory requirements for applicants to borrow money for wastewater pollution control facilities from the State Revolving Fund (SRF). Amendments included, among other things, expanded uses, more flexible terms for borrowers, and provisions for more extensive public comment. The rule was posted for public comment on February 1, 2007. The rule was adopted on April 19, 2007.
- Chapter 691 Rules for Underground Oil Storage Facilities (amendments): The amendments allow certified underground storage tank (UST) inspectors to do minor repairs found during inspections; enact minimum safety standards for excavations at UST facilities to protect against fire, explosion, etc.; incorporate recent changes in statute; and make the rule consistent with recent updates to national and industry standards. The amendments were posted to public comment on December 21, 2006. The amendments were adopted on March 1, 2007.
- Chapter 872 Exemptions from the Ban on Sale of Mercury Switches, Relays and Measuring Devices (new): The rule establishes the procedure by which the manufacturer or user of a mercury relay, switch, instrument or measuring device may apply for an exemption from the sales prohibition authorized under Title 38, section 1661-C(6) and (7). The proposed rule was posted for public comment on October 5, 2006. The rule was adopted on March 1, 2007.

- Chapter 1262 Amendment to State-Imposed Shoreland Zoning Map for Steuben. Correction to the zoning map, rezoning a portion of 7 lots from Resource Protection to Limited Residential District. The rule change was posted for public comment on April 19, 2007. The change was approved on September 20, 2007.

State Implementation Plan (amendments): The federal Clean Air Act Amendments of 1990 require that the Department provide an opportunity for a public hearing on, and formally adopt, any changes to the State's program for implementation of the Clean Air Act. The Department has proposed an amendment demonstrating that emissions from Maine do not contribute significantly to other state's non-attainment or interfere with maintenance of the 8-hour ozone or particulate matter PM2.5 national ambient air quality standards, or another state's efforts to prevent significant deterioration of air quality. The proposed amendment was posted for public comment on December 6, 2007. Board adoption is anticipated in early 2008.

## **B. Major Applications and Other Licensing Matters**

Title 38 section 341-D, subsection 2 provides that: "The board shall decide each application for approval of permits and licenses that in its judgment:

- A. Involves a policy, rule or law that the board has not previously interpreted;
- B. Involves important policy questions that the board has not resolved;
- C. Involves important policy questions or interpretations of a rule or law that require reexamination; or
- D. Have generated substantial public interest."

An application of substantial public interest is further defined in rule as a project which has "the potential to affect a broad geographic area or a natural resource of statewide significance, or has generated more than local interest" [06-096 CMR Chapter 2]. In addition, statute requires that the Board decide certain applications directly.

Major applications before the Board in 2007 included:

- Dragon Products, Thomaston. The Board held a public hearing on the solid waste applications for closure and reclamation of the facility's cement kiln dust and waste clinker storage piles in September 2006. The public record was held open following the September hearing to allow for further modification of the proposed clinker pile leachate management system to address concerns raised during the review and hearing process. The Board held an additional session of the public hearing to review these changes on February 15, 2007. The Board issued an order on June 21, 2007 granting a solid waste license for closure and reclamation of the waste piles.



- Downeast LNG, Inc. and Downeast Pipeline, LLC, Robbinston. On January 18, 2007 the Board voted to assume jurisdiction over the applications by Downeast LNG, Inc. and Downeast Pipeline, LLC (Downeast) to construct a liquefied natural gas (LNG) import terminal in Robbinston and send-out pipeline in Robbinston, Calais, Baring Plantation, Baileyville and Princeton. Following several pre-hearing conferences with the parties and the submission of pre-filed direct and rebuttal testimony, a public hearing on the proposed project was held in Robbinston and Calais on July 16, 17, 18, 19, and 20, 2007.

At the conclusion of the hearing, the record was held open to receive additional evidence on certain issues and the Board scheduled an additional day for a public hearing (September 19, 2007) to receive testimony on the additional evidence.

Prior to the September 19<sup>th</sup> hearing, Downeast filed a request to withdraw its application and to re-file with additional evidence not previously allowed by the Board. After initially denying the request to withdraw the applications, the Board granted the request on November 15, 2007. The applications are no longer pending with the Board.

- Quoddy Bay LNG, LLC and Quoddy Bay Pipeline, LLC. On August 2, 2007 the Board voted to assume jurisdiction over the applications by Quoddy Bay LNG, LLC and Quoddy Bay Pipeline, LLC (Quoddy Bay) to construct a liquefied natural gas (LNG) import terminal at Pleasant Point and send-out pipeline. On October 9, 2007 Quoddy Bay filed a request to slow the processing of its applications, citing Quoddy's need to gather additional information. The request was granted on October 11, 2007. The applications remain on hold at the request of the applicant.

Other significant licensing proceedings included:

- Portsmouth Naval Shipyard Commercial Hazardous Waste Storage Facility: License Renewal. In May 2001, the Board approved construction of a commercial hazardous waste storage facility which was licensed to accept wastes from other Department of Defense facilities located in New England. In January 2006, Portsmouth Naval Shipyard applied for a license renewal. In accordance with licensing procedures for such facilities, on December 7, 2006 the Board posted a draft order for a 45 day public comment period. The Board approved the license renewal on April 5, 2007.
- FPL Energy Wyman, Wyman Station: Alternative NOx Emission Limits. In July 2001, the Board adopted Chapter 145 establishing NOx control requirements for large stationary sources. The rule established emission limits to be attained by January 2005, and established a process to request an alternative emission limit if a source had installed an approved technology but was still unable to meet the emission limits. FPL Energy applied for an alternative emission limit for Units 3 and 4 at its Yarmouth facility. Following collection and analysis of additional data on facility operations, a draft license was posted for public comment on February 1, 2007. A license approving alternative limits was issued on September 20, 2007.

- Clean Harbors Environmental Services, Inc., South Portland. License Renewal. Clean Harbors has operated a commercial waste oil storage and treatment facility in South Portland since September 1985. The Board approved the license renewal on November 1, 2007.

### C. Appeal of Department Decisions

The appeals considered by the Board in 2007 are summarized below.

- Verso (formerly International Paper Company), Jay; Rumford Paper Company, Rumford; and FPL Energy Maine Hydro Gulf Island Pond / Deer Rips Hydro Project. Appeal of Maine Pollutant Discharge Elimination System Permits and Maine Waste Discharge Licenses, and the Water Quality Certification for Gulf Island Pond. The Board received multiple appeals of these licenses and certifications. Following numerous pre-hearing conferences to resolve issues of procedure and the submission of pre-filed direct and rebuttal testimony, the Board held a public hearing on the appeals on May 2, 3, 4, 8, 9 and 10, 2007. Following the close of the record and the filing of post-hearing briefs, the Board conducted deliberative sessions on August 2 and 16, 2007 and September 6, 2007. Draft orders were issued for public comment on November 27, 2007. At its meeting on January 17, 2008 the Board directed staff to make certain changes to the draft orders. A decision on the licenses is anticipated at the February 7, 2008 Board meeting.
- Appeal of Natural Resource Protection Act Permit, Beals Island. The application was for the expansion of a commercial fishing wharf. The appellants contended that the proposed expansion would have an unreasonable adverse impact upon marine habitat, aquatic life, and the scenic and aesthetic uses of the cove. The Board denied the appeal and affirmed the Department's decision approving the application for expansion of the commercial fishing wharf.
- Residential Subdivision (Spurwink Woods), Cape Elizabeth. Appeal of Stormwater Permit. The appellants contended that the proposed project also required a Site Location of Development Act permit and had not been adequately reviewed by the Department. The Board denied the appeal and affirmed the Department's decision granting the permit. The matter was appealed to the Superior Court, which upheld the Board's decision. The matter is now pending before the Law Court.
- Red Shield Environmental, LLC, Old Town. Appeal of Air Emission License Amendment. The applicant sought transfer of the facility license from the Fort James Operating Company to Red Shield Environmental and an extension of the carbon monoxide emission limits on the biomass boiler to allow for boiler start up. The appellants opposed license transfer and the extension of the emission limit. The Board denied the appeal and affirmed the Department's decision to transfer the license and extend the emissions limit.

- Pond View Store, Ellsworth. Appeal of Denial of Time Extension for Temporary Out-Of-Service Status. Chapter 691 contains a provision that allows an underground oil storage facility to be placed in temporary out-of-service status for a period of twelve consecutive months if certain actions are taken to secure the facility. The Department found that those conditions had not been met and required that the tanks be removed. The Board denied the appeal filed by the tank owner and affirmed the Department's decision.
- Appeal of Natural Resources Protection Act Permit Tier 1 Wetland Alteration Permit, Rackliff Island, St. George. The permit allowed filling of freshwater wetland for the purpose of constructing a driveway and the fill extensions of a subsurface wastewater disposal system for a new residential structure. The appellants contended that the applicant had alternatives, namely constructing the house at an alternative location on the lot that they argued would have less impact on the wetland. The Board denied the appeal and affirmed the Department's decision.
- Application for a Private Recreational Dock in Bar Harbor. In April 2002 the Board granted an appeal and denied the application of Anthony and Erin Uliano finding that the proposed project would unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses, the cumulative impact would be significant, and there was a practicable alternative that would be less damaging to the environment. The decision was appealed to Superior Court, which upheld the Board's decision. The applicants then appealed to Maine's Supreme Court (Law Court). The Law Court vacated the Superior Court's judgment and remanded the case to the Board for further proceedings consistent with its opinion. The Board subsequently voted to reopen the record to receive evidence on the standards cited by the Law Court. The Board issued an order on February 6, 2007, again denying the application. The decision has been appealed to Superior Court.

#### Pending Appeals

- Appeal of Natural Resources Protection Act Permit for Construction of a Permanent Pier, Winter Harbor. The Department denied the application finding unreasonable interference with the existing scenic, aesthetic, recreational and navigational uses of the resources. The Board has directed staff to draft an order approving the application. The Board will consider the revised order in early 2008.
- Unity College of Maine, Appeal of Site Location of Development and Natural Resources Protection Act Permit. The application is for an addition to the welcome center. The appellant abuts the proposed development site and expresses concerns with stormwater management at the site. The matter is pending.

#### **D. Petitions to Modify, Suspend or Revoke a License**

Title 38 section 341-D(3) provides that "...the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license" under certain specified circumstances. The Board considered the following petitions in 2007.

- Kennebec River Petitions: The Board considered two petitions requesting modification of the water quality certifications for four hydropower projects on the Kennebec River (Weston, Shawmut, Hydro-Kennebec and Lockwood) to require immediate upstream and downstream passage for American eel and certain species of migratory fish. The existing certifications for these hydropower projects (Lockwood issued August 26, 2004; Hydro-Kennebec issued June 6, 1986; Shawmut issued May 1, 1981; and Weston issued November 17, 1992) contain requirements for phased-in eel and fish passage based on biological triggers in accordance with the terms of the 1998 KHDG (Kennebec Hydro Developers Group) Agreement. Following a public hearing on the petitions in March of 2007, the Board determined that it would not modify or seek to suspend or revoke the water quality certifications for the projects. The Board's decision document was issued on July 5, 2007. Two appeals of the Board's decision were filed. The Superior Court dismissed both appeals for lack of jurisdiction. [*Friends of Merrymeeting Bay v. Maine Board of Environmental Protection*, Docket No. AP-07-10, (Me. Super. Ct., Sag. Cty., November 8, 2007)(Horton, J.) and *Douglas Harold Watts v. Maine Board of Environmental Protection*, Docket No. AP-07-11, (Me. Super. Ct., Sag. Cty., January 17, 2008)(Horton, J.)] Douglas Watts has appealed to the Law Court.
- Androscoggin River Petition II: In 2006 the Board considered two petitions that requested modification of the water quality certifications for 11 hydropower projects on the Androscoggin and Little Androscoggin Rivers (Androscoggin River I Petitions) to require immediate upstream and downstream passage for American eel. The existing certifications contained various requirements for fish passage, but none for eels. After hearing arguments from the petitioners and the facility owners, the Board dismissed the petitions. Friends of Merrymeeting Bay subsequently filed a second petition (Androscoggin River Petition II) again seeking modification of the water quality certifications for a number of dams on the Androscoggin and Little Androscoggin Rivers including: Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, Gulf Island Pond/Deer Rips, Livermore/Jay/Riley, Otis, Rumford Falls, Barker Lower Mills, Barker Upper Mills, Hacketts Mills, and Marcal Dam. The petition was considered at the Board's May 17, 2007 meeting and dismissed. The Board's decision was appealed to Superior Court, which dismissed the appeal for lack of jurisdiction. [*Ed Friedman v Maine Board of Environmental Protection*, Docket No. AP-07-06, (Me. Super. Ct., Sag. Cty., November 8, 2007)(Horton, J.)] That decision has been appealed to the Law Court.

- Messalonskee Stream Hydro: The Board considered a petition to modify the water quality certification for the Messalonskee Stream /Union Gas Hydro Project (issued August 28, 1995) to require lowering of the licensed height of the dam to the elevation of the natural bedrock in order to allow for upstream and downstream eel and fish passage. The petition was considered at the Board's October 4, 2007 meeting and was dismissed. The Board's decision, which was appealed to Superior Court, was dismissed by the Court for lack of jurisdiction. [*Douglas Harold Watts v Maine Board of Environmental Protection, Docket No. AP-07-73, (Me. Super. Ct., Sag. Cty., January 10, 2008)(Jabar, J.)*] That decision has been appealed to the Law Court.

## **E. Enforcement Actions**

During 2007, the Board approved 92 Administrative Consent Agreements and/or Enforcement Orders. These enforcement actions, listed by statute or rule with the number of each type indicated in parentheses, are as follows:

### Air

- Air emission standards and license conditions (11).
- Gasoline Dispensing Facilities Vapor Control Rule, Chapter 118 (5).
- New Motor Vehicle Emission Standards, Chapter 127 (3).

### Hazardous Waste, Solid Waste, Oil Discharge

- Asbestos Management Regulations (9).
- Hazardous Waste Management Regulations (7).
- Oil Discharge Prevention Law (4).

### Land and Water

- Erosion and Sedimentation Control Law: Violations of this law occurred in 15 of the other enforcement cases listed in this section.
- Natural Resources Protection Act (28): Violations of the NRPA were frequently accompanied by violations of the following laws: Erosion and Sedimentation Control Law (11 of 28), the Protection and Improvement of Waters Act (3 of 28), and the Storm Water Management Law (2 of 28).
- Performance Standards for Excavations (gravel mining) (6): One of the six violations also involved violations of Site Law (1); and one of the six violations also included violations of the Performance Standards for Quarries, the conditions of the Air Emissions license, and the Solid Waste Management Rules.
- Protection and Improvement of Waters Act (10). In addition, three of the NRPA violations cited above also included violations of the Protection and Improvement of Waters Act.
- Site Location of Development Law (3).
- Site Location of Development Law and Natural Resources Protection Act (1): This violation also included violations of the Erosion and Sedimentation Control Law, the Stormwater Management Law, and the Solid Waste Management Rules.
- Stormwater Management Law (5): In addition, two of the NRPA violations and the Site/NRPA violation cited above also included violations of the Stormwater Law.



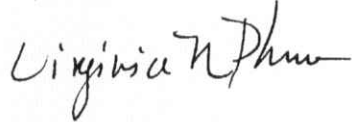
**F. Informational Workshops**

Department staff provides informational workshops at regularly scheduled Board meetings throughout the year for the benefit of Board members and any members of the public who wish to attend. Workshops in 2007 addressed: Site Location of Development Standards, the Department's Application Review Process, water quality issues including determination of TMDL (total maximum daily load), and the Regional Greenhouse Gas Initiative. Board members also toured Central Maine Power Company's PCB (polychlorinated biphenyls) storage facility in Augusta.

**V. Closing**

We appreciate this opportunity to update you on our work, and welcome any comments you may have.

Respectfully submitted,



Virginia N. Plummer, Chair

Attachments:

- A. Board Members: List and Biographical Information
- B. 2007 Meeting Agendas

Other Legislative Submittals (not attached to this report)

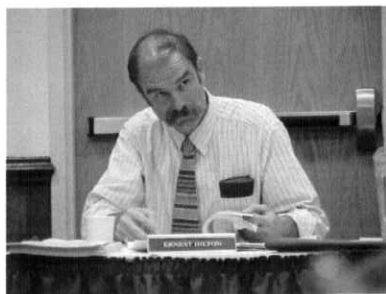
- > Resolve 2007, Chapter 109 Update Plans for the Passage of Native Diadromous Fish (dated January 17, 2008)
- > Letter concerning Department Rule Chapter 150 Control of Emissions from Outdoor Wood Boilers (dated January 17, 2008)

## MAINE BOARD OF ENVIRONMENTAL PROTECTION



***Virginia N. Plummer, Turner - Chair – 2 nd Term***

Board Member Plummer is a writer, an independent filmmaker, and a Human Services Consultant, providing services to state agencies and numerous non-profit organizations. Past professional experience includes that of Executive Staff and Principal Writer for the Department of Human Services Commissioner's Task Force on Incapacitated and Dependent Adults, Executive Director of the Maine Committee on Aging, and Director of Special Projects for the Maine Committee on Aging including the WGME television production entitled "Gray Matters". Ms. Plummer is a member of the International Women's Writing Guild; Board member of the Nezinscot Guild, an agency that employs developmentally disabled individuals; a coach for Odyssey of the Mind teams in SAD #52, and Board member of the Student Based Health Center in SAD #52. Ms. Plummer was appointed to the Board in October of 1999. Governor Baldacci appointed Ms. Plummer as Chair in January of 2007.

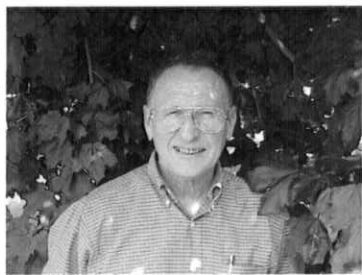


***Ernest W. Hilton, Starks -- 2 nd Term***

Board Member Hilton is an Attorney and Professional Engineer with a law and engineering office in Madison, Maine. He holds a law degree from the Dickenson School of Law in Carlisle, Pennsylvania and engineering degrees from the University of Maine at Orono in engineering physics and from West Virginia University in mining engineering. Mr. Hilton has worked with both private sector clients and public agencies on legal, technical and policy issues since 1978. He worked as a mining consultant for a number of years in Pennsylvania where he is still a registered engineer. He has also worked as an attorney, engineer and consultant for the Maine Public Utilities Commission on a variety of construction, generation, transmission and conservation issues. His civic experience includes two years as a Selectman for the Town of Starks, nine years as Chairman of the Starks Board of Appeals, and ten years on the SAD #59 School Board. In addition, Mr. Hilton has founded and been active in a number of historical societies as well as conservation and environmental organizations. He and his family live on a family farm in Starks where they have raised sheep, cattle, and horses, harvest hay, and manage a woodlot. Mr. Hilton was appointed to the Board in May of 1999.

## MAINE BOARD OF ENVIRONMENTAL PROTECTION

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**Matt Scott, Belgrade -- 1 st Term**

Board Member Scott is an Aquatic Biologist, a Certified Fisheries Scientist, and an elected Fellow to the American Institute of Fishery Research Biologists. He holds both Bachelors and Masters degrees in Wildlife Management, Fishery Science and Public Administration from the University of Maine. Following retirement from 38 years of service in Maine State Government, including service as Deputy Commissioner for the Department of Inland Fisheries and Wildlife, Mr. Scott was given Emeritus status by the American Fisheries Society, American Institute of Fishery Research Biologists, and the North American Lake Management Society. In addition to his State Service, Mr. Scott has been an adjunct faculty member at Colby College and has served as Executive Secretary for Project SHARE (Salmon Habitat and River Enhancement). He is a past President of the North American Lake Management Society, a past President of the Sportsman's Alliance of Maine, and, as a hobby beekeeper, a past President of the Eastern Apicultural Society of North America. Mr. Scott is also a Registered Master Maine Guide, and serves on the Maine Guides Advisory Board. Matt's volunteer and community service work has included pro bono work for many conservation and environmental organizations, service on the Belgrade Planning Board, and service as Scoutmaster and Committee Chairman for Boy Scout Troop 453 in Belgrade. He resides in Belgrade on his 100 acre farm where he manages a woodlot and maintains several colonies of bees for pollination and honey production. Governor John E. Baldacci appointed Mr. Scott to the Board in June 2003 and as Chair from June 2005 to December 2006.



**Nancy C. Anderson, Cumberland Foreside -- 1st Term**

Board member Anderson has a law degree from Harvard University and an undergraduate degree in Government. As a staff attorney for the Maine Audubon Society from 1982 to 1987, Ms. Anderson was actively involved in habitat protection, conservation and natural resource protection policy issues. Ms. Anderson subsequently served as a Board member, Vice President and President of Maine Audubon from 1988 to 1994 and in those roles continued to work with various interest groups to craft conservation policy. She is currently an organizer and leader of weekend retreats in nature. In addition to her interest in environmental policy, Ms. Anderson is a singer and soloist in the Woodfords Congregational Church Choir in Portland and a concert organizer for local non-profit organizations such as the Maine Time Dollar Network. She also was a co-founder of the Maine Women's Fund, a grant making organization that works in partnership with other non-profits to create solutions to the problems facing Maine's women and girls. Ms. Anderson was appointed to the Board in October of 2003.

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**Nancy Ziegler, So. Portland -- 2nd Term**

Board Member Ziegler is a graduate in History of the University of California at Berkeley and of the University of Maine School of Law. She was admitted to practice law in Maine and Federal Court in 1981. Following law school, Ms. Ziegler worked as a research associate at the Marine Law Institute in Portland. She then became an associate with the Portland law firm of Curtis, Thaxter, Stevens, Broder and Micoleau (1984-1994), with a practice in civil litigation including several significant cases involving land use, regulatory and environmental matters. Ms. Ziegler has fourteen years of experience as a debate and mock trial coach at Cape Elizabeth High School where she coached five varsity Lincoln-Douglas Debate state champions. Ms. Ziegler was the author of the 2003 Maine State High School Mock Trial competition case sponsored by the Maine State Bar Association. She has served on the Boards of the Maine Suzuki Association, the Jewish Community Center of Portland, and the East End Children's Workshop. Ms. Ziegler was an Assistant Editor of WomenSports Magazine (1973-1975) and a freelance writer with articles published in Runner's World Magazine, Mother Jones Magazine, and San Francisco City Magazine. Ms. Ziegler was appointed to the Board in April of 2002.



**Donald Guimond, Fort Kent -- 1 st Term**

Board member Guimond is the Town Manager of Fort Kent, a position he has held since December of 1993. As Town Manager Mr. Guimond is responsible for many aspects of local government including budget preparation and implementation; personnel management; oversight of police, fire and public works departments; as well as oversight of economic and community development initiatives. Other professional experience includes service as the Planning and Economic Development Coordinator for the Town of Fort Kent, Program Assistant for the Farm Service Agency, and Manager of the Fort Kent Federal Credit Union. He has also served as Director for the Greater Fort Kent Area Chamber of Commerce and Director of the Aroostook Municipal Association. Mr. Guimond is a partner/operator of a family farm consisting of over 1000 acres, maintaining a cow/calf operation in excess of 100 broad cows as well as the harvesting of grains, hay, straw and forest products. He was recognized as the St. John Valley Outstanding Conservation Farmer in 1990 and Maine Beef Producer of the Year in 1993. Mr. Guimond is also a certified official for the United States Biathlon Association. Mr. Guimond holds a Bachelors Degree in Business Administration from Husson College. He was appointed to the Board in April 2004 by Governor John E. Baldacci.

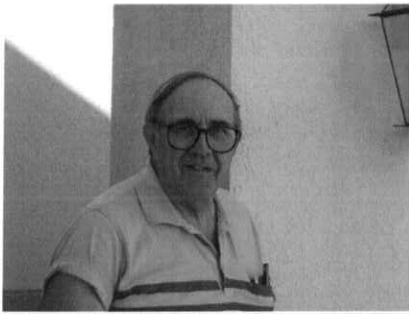
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**Elizabeth E. Ehrenfeld, Falmouth -- 1 st Term**

Board member Ehrenfeld holds a doctorate in Microbiology and Immunology from the University of Michigan and an undergraduate degree in Biological Sciences from Cornell University . Ms. Ehrenfeld lived in Switzerland for 5 years doing post-doctoral work in bacterial genetics at the University of Geneva Medical School, and the Nestle corporate research center. In 1992 she moved to Maine to work for IDEXX Laboratories where she developed diagnostic tests for the food industry. She has written numerous scientific papers, and has several patents on detection of bacteria in drinking water and food. She is currently an adjunct professor in the Science Department at Southern Maine Community College where she teaches courses in Microbiology, Genetics and Biotechnology. She is a founding member of Mainely Women in Science, and currently serves on the board of the Biotech Association of Maine. Outside of the scientific world, Ms. Ehrenfeld is a Registered Maine Guide who enjoys many outdoor pursuits, including sea kayaking, cross-country skiing, and hiking. She has led trips and taught classes for a number of organizations in Maine , including LL Bean, Maine Audubon, and the Woodenboat School . Ms. Ehrenfeld is a past President of the Board of Trustees of Portland Trails, and currently serves on the Board of the Appalachian Mountain Club. Ms. Ehrenfeld was appointed to the Board by Governor Baldacci in June 2005.



**Richard Gould, Greenville -- 1 st Term**

Board member Gould is a retired high school teacher and former State Legislator with a long history of service to his community and the state. During his twenty-two year career as a high school teacher, Mr. Gould taught government and history in the Greenville school system, and served as the vocational education director for the towns of Greenville and Jackman. Mr. Gould was elected to the Maine House of Representatives, serving five terms from 1986 to 1996. During his tenure in the Legislature, Mr. Gould was a member of the Joint Standing Committee on Energy and Natural Resources, including a term as co-chair of the Committee. After leaving the State House, Mr. Gould was employed by Great Northern Paper as the company's legislative liaison, working with natural resource issues, policies and legislation. At the local level, Mr. Gould has been a Selectman for the Town of Greenville for over twenty years, including twelve years as Chair. He currently serves as Greenville 's Code Enforcement Officer and is in his second term on the Greenville School Committee. Mr. Gould has also worked as a wood harvester and managed a family farm. He and his wife reside in Greenville where they enjoy gardening and spending time with their grandchildren. Mr. Gould was appointed to the Board by Governor Baldacci in March 2006.



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***Susan Lessard, Hampden -- 1 st Term***

Ms. Lessard, who has more than 25 years of experience in local government, is currently the Town Manager for the Town of Hampden where her responsibilities include budget development and administration, personnel administration, policy implementation, investment management and economic development. She previously served as Town Manager for the communities of Vinalhaven, Fayette and Livermore Falls. Ms. Lessard has received a number of awards during her service in Maine communities including the Governor's Environmental Excellence Award (2002) for collaborative process development for municipal review of major landfill expansion projects in Hampden, a Maine Engineering Excellence Award (1998) and Maine Town and City Manager's Association Leadership Award (1999) for the development of an innovative alternative landfill capping plan for the town of Vinalhaven which resulted in substantial savings to the community and the State. Ms. Lessard also served on the Maine Lighthouse Selection Committee, receiving a U.S. Coast Guard Public Service Commendation (1996) for her work on a program to transfer ownership of thirty-five Maine lighthouses from the federal government to municipalities and non-profit organizations across the state. Ms. Lessard's service to Maine communities also includes her work at Maine Tomorrow where she was involved in community planning and transportation projects. Susan is currently a member of the Hampden Congregational Church, Maine Town & City Manager's Association, and the Bangor Region Chamber of Commerce. She also serves on the board of directors for the Municipal Review Committee and served as President of the Maine Municipal Association in 2003. Her educational background is in public administration and engineering. Ms. Lessard has two adult sons, one who works in special education and one as a researcher at Jackson Lab. She currently resides in Hampden with her Boston terrier, Sassy, who also serves as the mascot at the Hampden Town Office. Ms. Lessard was appointed to the Board by Governor Baldacci in July, 2007.



***M. Wing Goodale, Falmouth -- 1 st Term***

Board Member M. Wing Goodale is a research biologist and seabird program director at BioDiversity Research Institute, a Maine-based nonprofit ecological research group. He carries out diverse fieldwork, from conducting bird surveys to testing seabird eggs for mercury to capturing and collecting blood from bald eagles. When not in the field, Goodale prepares scientific papers, conducts GIS analysis, manages Biodiversity's Web site, and oversees live eagle and loon Web cameras. Outside of work, he is a member of the Falmouth Shellfish Committee and membership chair of the Waterbirds Society. Prior to BioDiversity, Goodale studied wildlife in many regions of the continental U.S., worked with endangered species in Hawaii, assessed a macaw reintroduction project in Costa Rica, and assisted in an expedition to the lowland rainforest in Brazil. For his work he has been recognized as a National Fellow of the Explorers Club. Goodale has a bachelor's degree in biology from Colorado College and master's degree in conservation biology from College of the Atlantic.